

1982 WL 189293 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

May 14, 1982

*1 Lewis M. Levy, Esquire
Staff Counsel
South Carolina State Housing Authority
2221 Devine Street
Suite 540
Columbia, South Carolina 29205

Dear Lewis:

You have requested an opinion based on the following facts, which I adopt, with slight changes, from your letter of May 14, 1982: In preparation for its next Single Family Program, the Authority on December 29, 1981, sent an Invitation to Bid to all private mortgage insurance (PMI) companies licensed to do business in the State. The Invitation outlined projected parameters for PMI coverage and invited all recipients to a meeting to be held on January 7, 1982. On January 7, 1982, the staff met with representatives of four (4) PMI companies. No further response was or has since been received by any of the other PMI companies. On January 29, 1982, a follow-up memorandum was sent to the four attending companies outlining in more complete detail the Authority's requirements and requesting formal proposals. On February 19, 1982, a memorandum was sent to the four attending companies thanking them for their response to our request for proposals. After extensive review by the Authority's staff and lead underwriter, a tentative decision was made to recommend acceptance of the proposal submitted by Verex Assurance Corporation. This decision was communicated to the three other companies as well as to Verex. The Verex proposal was for 30% primary insurance coverage together with 20% pool insurance. Since it was not the intention of the Authority to grant an exclusive contract for primary insurance, the decision communicated to Verex was that the staff would recommend that the Verex proposal to provide 20% pool insurance be accepted but that any of the other three responding companies might write the 30% primary coverage. In subsequent conversations, Verex has advised that it is now in a position to provide 100% primary coverage together with certain endorsements thereto to protect the Authority, all at no cost to the Authority. Verex has not requested an exclusive contract to provide this coverage. Pool insurance will still be required in the event that the 100% primary coverage were utilized, although it would not be required at the 20% level.

The questions you have asked are, in the event the Authority elected to utilize the proposed 100% primary coverage, as follows:

1. Would it be necessary to recontract all the licensed PMI companies to give them an opportunity to participate, or may the Authority limit its notification to the four companies which responded to the Invitation to Bid of December 29, 1981;
2. Would it be necessary to reopen the bidding for the pool insurance; and
3. Could the Authority properly communicate the terms of the Verex 100% primary coverage program to the other three attending companies and offer them the opportunity to provide such coverage upon the same terms and conditions as Verex?

It is apparent that the changes proposed by Verex are not changes of the type for which re-offering to bidders is typically required, i.e., changes which result in substantial savings to the contractor. See 64 Am.Jur.2d, Public Works and Contracts, § 66. To the contrary, the proposed changes involve offering additional insurance at no extra cost to the Authority. It should also be mentioned that the reduction in pool coverage percentage, while seemingly a favorable change for the bidder, actually involves a charge to the Authority of only \$50 per year under either the 20% provision or the lesser provision. Accordingly, there is, in the opinion of this office, no requirement that the bidding for the pool coverage be reopened.

*2 Questions 1 and 3 are essentially one question, that is, whether the offer to provide primary coverage can be made only to the other 3 responding companies. There is no question that the terms of the Verex program may be communicated to those other 3 companies as the terms under which the Authority will permit private primary coverage to be issued; there was no request by Verex to be the exclusive provider and no representation by the Authority that such would be the case. The submission of the plan to only the other 3 companies may properly be regarded as an extension of the original program, should be sent out. Such being the case, it is the opinion should be sent out. Such being the case, it is the opinion of this office that it would be proper to offer the opportunity to write primary coverage only to the 3 companies which responded to the original invitation.

Sincerely yours,

Kenneth P. Woodington
Senior Assistant Attorney General

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